

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16116 of Michael and Elissa Baly, III, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that now exceeds the allowable percentage of lot occupancy requirements [Paragraph 2001.3(a) and (c)], and a variance from the rear yard requirements (Subsection 404.1) for a second-story addition to a single-family structure in an R-3 District at premises 1561 35th Street, N.W. (Square 1274, Lot 222).

HEARING DATE: May 15, 1996
DECISION DATE: June 5, 1996

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The subject premises is located at the southeast corner of the intersection of 35th and Q Streets, NW. The site is in an R-3 district and is known as premises 1561 35th Street, NW.

2. The subject site is rectangular in shape. Its dimensions are fifty feet on the east and west sides and 39.72 feet on the north and south sides. The lot has an area of 2,224.35 square feet.

3. The site is improved with a row dwelling. The subject dwelling is a three-story brick structure with basement. The structure is located at the western end of a row of dwellings that face north on Q Street. The subject structure has its entrance facing 35th Street on the west. For zoning purposes, Q Street has been determined to be the front of the structure. The house was originally built in the early 1900s, as a free-standing dwelling. It was subdivided in the 1940s, and became a rowhouse.

4. There is access to and from the subject site through 35th Street on the west and through Q Street on the north. There is no alley access. The subject square is developed with rowhouses, apartment houses and single-family dwellings. At the southwest corner of the square is the Volta Bureau for the Teaching of Speech to the Deaf.

5. The neighborhood surrounding the subject site is zoned R-3 on all sides of the square. The Convent of the Visitation and Georgetown University are located immediately west of the subject site across 35th Street. There is a C-2-A strip located three blocks east of the site on Wisconsin Avenue. The subject area is part of the Georgetown Historic District.

6. While the original determination by the Zoning Administrator's office was that the building had a 40 percent lot occupancy requirement, the Zoning Administrator subsequently determined that the building was a row house, and, as such, had a 60 percent lot occupancy requirement. The property already is at 61 percent lot occupancy; the proposed porch would continue the nonconformity, but would not extend it.

7. The Office of Planning (OP) by report dated May 7, 1996, recommended against granting the variance, largely based on two factors. The first was that it felt that there had not been a sufficient finding of practical difficulty. Second, while the Office of Planning report indicated that it did not see any adverse impact on the neighbors, and indeed found that the design was "superior", it felt that increasing the bulk on the property could harm the integrity of the zone plan, because it already had a lot occupancy much greater than that permitted in R-3 zones. However, OP indicated at the hearing that the report had been written before the Zoning Administrator had corrected the permitted lot occupancy from 40 to 60 percent.

8. The applicant testified about the level of traffic in the neighborhood. She pointed out that 35th Street is a major arterial serving the entire Georgetown community. It represents a major north-south connection, the only one west of Wisconsin Avenue which connects with the University, Georgetown Visitation, Ellington School and Holy Trinity Church and school. She also indicated that Q Street is an east-west connector, and that both Q Street and 35th Street are well-used bus routes.

9. The applicant testified that, because of the traffic on both streets, the noise and pollution levels are such that the family cannot open its windows. The family has two very young children, and wishes to provide a protected, private play area for them. She also indicated that the noise and dust levels will be considerably aggravated over the next several years, by Georgetown Visitation's recent decision to build two new large structures, immediately across the street from the Baly residence.

10. The architects for the project testified that, because of the noise and pollution, they concluded that the enclosure of the second story porch would be the only way to provide a play space and privacy area for the family.

11. As to the uniqueness of the property, the architects traced the development of the property over the years. It was initially built in the early 1900s as a single family, free-standing structure, with a rear and side yard, which were subsequently subdivided in the 1940s, eliminating the side yard and much of the rear yard. He testified that, unlike all the other

houses on 35th Street, the subject property has no rear yard separated from the noise and pollution of the street by the dwelling. He pointed out that this was unique to houses in the immediate neighborhood.

12. The architects also testified regarding the practical difficulty inherent in a strict application of the zoning regulations. He corroborated the applicant's description of the noise levels along 35th Street, indicating that merely fencing off the paved area along 35th Street would not make a suitable privacy area and play space. The architects also pointed out that, although it appears from the outside that the house is quite large and would have existing space which could be used as a play area, a great deal of the internal space of the building is consumed by a u-shaped central stairway.

13. The applicant indicated that, in terms of practical difficulty, the family had considered using the second story porch, but the noise and pollution levels were still too high, and it was not safe for small children to play there without installing higher walls, which would in turn require a variance, and may not be able to win approval from the Fine Arts Commission. Responding to the Office of Planning suggestion that they use the paved driveway as a play area, the applicant pointed out that this would displace the family auto, which would then further exacerbate the shortage of on-street spaces in the rest of the neighborhood.

14. The subject property is within the historic district boundaries. The proposed addition has received approval from the Fine Arts Commission.

15. The architects testified that they used large amounts of glass in the proposed addition to minimize any appearance of bulk. They also testified that the walls of the addition exactly mirror the dimensions of the first level, and does not extend the non-conformity at all.

16. The single member district commissioner for the neighborhood from the Advisory Neighborhood Commission (ANC), testified that ANC2E voted unanimously to support the variance request. She explained that, while the ANC usually testifies in opposition to variances in the neighborhood, the proposed addition was in keeping with the scale and character of the neighborhood, and that she concurred that the traffic along 35th Street did necessitate a protected, privacy area.

17. There was no opposition to the proposed variance from any neighbors. A letter of support was submitted from the neighbor most directly affected.

18. Counsel for the applicant argued that no rear yard variance was actually needed, since Section 2001.3 of the Zoning Regulations provides that additions and enlargements may be made to nonconforming structures, providing that they meet three criteria. The first is that the structure conform to lot occupancy requirements, which is virtually the case here, since the existing structure only exceeds the maximum lot occupancy by one percentage point. The other two criteria, that the addition conforms to use and structure requirements and that the addition may not extend the nonconformity, or create any new conformity, are both met in this case.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds the following:

1. The proposed addition does not increase the nonconforming lot occupancy.
2. The structure is nonconforming because it is one percent over the maximum lot occupancy of 60 percent.
3. The structure was built prior to the adoption of the current Zoning Regulations.
4. The Board disagrees with the opinion of the Office of Planning.
5. The nonconforming rear yard was created before the adoption of the current Zoning Regulations.
6. The Board credits the testimony of the applicant and their architects.
7. The Board agrees with the recommendation of the ANC.
8. The second story rear addition provides a 19-foot rear yard.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the relief requested can be granted

without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan. The Board agrees with counsel for the applicant that a variance for lot size is unnecessary. However, a variance from the rear yard is necessary since the addition does not meet the rear yard set back of 20 feet. The addition extends to the limits of the first floor which has a 19 foot rear yard.

The Board concludes that the applicant has met his burden of proof in evidencing a practical difficulty inherent in the property and unique to this site. The manner in which the lot has been subdivided has left this property as the only one in the neighborhood which has its yard area directly abutting on 35th Street, with no protection or privacy area from the traffic congestion, noise and fumes of the buses and other vehicles which use that street.

The Board further concludes that alternatives do not exist for providing a privacy area and play space for the children. If the applicants eliminate the paved driveway, it will not provide a private space, since it is directly abutting 35th street, and it will also exacerbate the parking shortage in the neighborhood. The existing porch, in its current unenclosed state, would appear to be a poor candidate from a safety standpoint, and the Board accepts the architects' argument that the interior stairwell consumes sufficient internal space that there is no other space within the house which is suitable.


The Board further concludes that the variance can be granted without impairing the integrity of the zone plan, since the structure is not increasing the nonconformity of the structure.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the great weight to which it is entitled. Accordingly, it is hereby **ORDERED** that the application is approved.

VOTE: 4-0 (Maybelle Taylor Bennett, Sheila Cross Reid, Susan Morgan Hinton and Laura M. Richards to grant; Angel F. Clarens not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: _____

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PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16116

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on OCT 1 1996 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Richard B. Nettler, Esquire
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Advisory Neighborhood Commission 2E
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A handwritten signature in cursive script, reading "Madeliene H. Dobbins", is written over a horizontal line.

MADELIENE H. DOBBINS
Director

DATE: OCT 1 1996.